

November 15, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email: hearex@metrokc.gov

**ORDER GRANTING APPLICANT AND RESPONDENT DDES MOTIONS FOR SUMMARY
JUDGMENT DISMISSING APPEAL; DENYING APPELLANT CROSS MOTIONS FOR
PARTIAL SUMMARY JUDGMENT; AND CANCELING HEARING**

SUBJECT: Department of Development and Environmental Services File No. **L06S0012**

SUMSKY SHORT PLAT
Short Plat Appeal

Location: 11807 Southeast 192nd Street, Renton

Appellant: King County Fire Protection District No. 37
represented by **Brian K. Snure**, Attorney at Law
Snure Law Office
612 South 227th Street
Des Moines, Washington 98198
Telephone: (206) 824-5630
Facsimile: (206) 824-9096

Applicant: Charter Homes, Inc.
represented by **Robert D. Johns**
Johns Monroe Mitsunaga
1601 – 114th Avenue Southeast, Suite 110
Bellevue, Washington 98004
Telephone: (425) 467-9960
Facsimile: (425) 451-2818

King County: Department of Development and Environmental Services (DDES)
represented by **Barbara Heavey**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7222
Facsimile: (206) 296-6613

Respondent DDES and the Applicant have moved for dismissal of the subject short plat appeal, asserting that the Appellant's requested relief is barred by the operation of law. Responses and replies to the motions were offered under a schedule established by Examiner order. The Appellant's response brief

also presented cross motions for partial summary judgment. After reviewing the submittals, the Examiner finds and concludes as follows in deciding the motions:

1. The Appellant filed an appeal of the short subdivision approval granted by DDES on July 27, 2007, stating three claims of error:
 - a) That the approval fails to address fire protection, emergency medical service and public health and safety issues identified by the Appellant during county review;
 - b) That the approval errs “by not imposing any conditions addressing the District’s documented inability to meet its level of service standards to provide adequate fire protection and emergency services”;
 - c) “*As a result of the above errors,*” the approval “is inconsistent with RCW 58.17.110, RCW 36.70A.040(3) and the County’s Comprehensive Plan.” (emphasis added)
2. The relief requested in the District’s appeal is that a condition be imposed on short subdivision approval requiring that “as condition precedent to the issuance of final approval of the short subdivision, [the developer] negotiate and enter into a voluntary agreement with King County Fire District No. 37 pursuant to RCW 82.02.020 and consistent with the District’s established Growth Management and Level of Service Contribution Policy.” With respect to said policy (District Resolutions 317 and 318), the District goes on to state that “these policies explicitly identify a level of service standard that, *because of continuing growth and development in the District*, the District is not presently able to maintain *without additional funding coming from new development.*” (emphases added).
3. No matter how the District may parse the appeal claim in its briefings, the sole substantive thrust of its appeal claims and request for relief is that general fire district impact mitigation must be required of new development. There is no specific alternative claim or request expressed in the appeal that the subject short subdivision be denied or conditioned based on its *individualized* and *direct* impact on fire district-related emergency services provision. The subject short subdivision is addressed by the appeal only as a non-particularized part of a class, i.e., as one non-particularized component of new land development *generally* being undertaken within the District. There is no specific assertion that this particular development, by virtue of its own particular and direct impact, will have an adverse affect on District operations and will not be in keeping with the public health safety and welfare thereby. In summary, the appeal, with its assertions of error and relief sought, is a claim that the subject proposal, solely because of its comprising a non-particularized component of the general whole of new land development within the District, would cause an adverse impact which must be mitigated, by the payment of impact fees or in-lieu provisions, through the County’s requirement of a “voluntary” mitigation agreement between the developer and the District.
4. The District’s request for relief cannot be honored by the Examiner, as there is no legal authority for the requirement of impact fee payment to a fire district, nor for the requirement of a “voluntary” agreement for mitigation. The former are expressly prohibited by the combined operation of RCW 82.02.020’s general prohibition of development impact fees and RCW 82.02.090, which expressly excludes fire districts from the exceptions to the general prohibition. The latter cannot be required as an alternative approach under separate authority: no such authority exists in the instant case. No substantive authority is effective under SEPA (RCW 43.21C.060 and counterpart WAC 197-11-660) in this case, since the proposed action is exempt

under SEPA. The other citations of authority claimed by the District, among them the Growth Management Act, the County Comprehensive Plan and the operation of the State Subdivision Act through RCW 58.17.110, are unpersuasive; none provide authority to *impose* a condition of approval *requiring* a voluntary agreement, and importantly, a voluntary agreement would in any case have to be based on a claim of particularized direct impact, not the solely general impact presented here. [RCW 82.02.020]

5. There being no authority in the instant case for the county to require mitigation of the generalized impacts of development which may be apportioned on a non-particularized basis to this individual development, and specifically no authority to impose fire district impact fees or to require a voluntary agreement for mitigation as requested by the District, the claims of error are not substantiated and the relief sought may not be granted under the law. Accordingly, the motions by the Applicant and the Respondent DDES for summary dismissal shall be granted.
6. The Appellant filed cross motions in its response brief, requesting summary judgment in favor of the District by rulings that:
 - a) The county has authority to require a voluntary mitigation agreement under the auspices of RCW 58.17.110 and KCC 19A.08.060 (the counterpart review criteria for short subdivisions and subdivisions under county code); and
 - b) That the county is required under KCC 19A.08.060 and the County Comprehensive Plan to take into consideration the formally adopted resolutions and policies of the district when considering fire safety issues under RCW 58.17.110.
7. With respect to the first issue, for the reasons noted above the County does not have legal authority to require a voluntary fire district mitigation agreement under state and local subdivision review criteria.
8. With respect to the second issue, the only means by which the County could confer legal authority on the District's resolutions and policies for consideration of fire safety issues in short subdivision and subdivision review would be if the county (or the state legislature) formally adopted such resolutions and policies as county ordinances, formal policies and/or rules (or as state law or rule).
9. For the above reasons, the Appellant District's cross motions for summary judgment shall be denied.

ORDER:

The motions by Respondent DDES and the Applicant for summary dismissal are granted, and the referenced short plat appeal is dismissed summarily. Appellant's cross motions are denied. The hearing scheduled for December 11, 2007 is canceled.

ORDERED November 15, 2007.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

This Summary Order shall be final and conclusive unless proceedings for review are properly commenced in Superior Court within twenty-one (21) days of issuance of this Order. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

TRANSMITTED via certified mail November 15, 2007, to the following persons:

Robert D. Johns
Johns Monroe Mitsunaga
1601 - 114th Ave. SE, # 110
Bellevue WA 98004

Brian Snure
Snure Law Office
612 S. 227th St.
Des Moines, WA 98004

TRANSMITTED November 15, 2007, to the following parties and interested persons:

Barghausen Cons. Eng.
Attn: Ivana Halvorson.
18215 - 72nd Ave. S.
Kent WA 98032

Robert D. Johns
Johns Monroe Mitsunaga
1601 - 114th Ave. SE, # 110
Bellevue WA 98004

Jone On & Jenny Chan
11626 SE 193rd Pl.
Renton WA 98058

Capt. Larry Rabel
Fire District. #37
24611 - 116th Ave. SE
Kent WA 98030

Brian Snure
Snure Law Office
612 S. 227th St.
Des Moines WA 98198-6836

Donald & Susan Sumsky
11807 SE 192nd St.
Renton WA 98058

Erik Wicklund
Charter Homes Inc.
601 Union St., Ste 5100
Seattle WA 98101

Kim Claussen
DDES/LUSD
MS OAK-DE-0100

Curt Foster
DDES/LUSD
MS OAK-DE-0100

Barbara Heavey
DDES/LUSD
MS OAK-DE-0100

Judi Moe
CPLN LUSD
MS OAK-DE-0100

Pat Simmons
DDES/LUSD
MS OAK-DE-0100

Chad Tibbits
DDES - LUSD
MS OAK-DE-0100

Steve Townsend
DDES/LUSD
MS OAK-DE-0100